

The Senate of The State of Texas



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BILL SIMS
STATE SENATOR
25TH SENATORIAL DISTRICT
ROOM 421, CAPITOL BUILDING
AUSTIN, TEXAS 78711-2068
512/463-0125
FAX 512/475-3732

POST OFFICE BOX 410
SAN ANGELO, TEXAS 76902
915/658-5852
FAX 915/655-2255

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Opinion Committee

Honorable Dan Morales
Attorney General
P.O. Box 12548
Austin, Texas 78711

Dear Dan:

Please find enclosed four questions about the Civil Practice and Remedies Code.

I would appreciate your rendering an opinion with regard to the applicability of the referenced Articles to Notaries Public.

Thanks for your help on this.

Sincerely,

Bill Sims
Bill Sims

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§ 402.041

EXECUTIVE OFFICERS Title 4

Historical and Statutory Notes

Prior Law:

Acts 1983, 68th Leg., p. 4514, ch. 735, § 1.
Vernon's Ann.Civ.St. art. 4399(e).

§ 402.042. Questions of Public Interest and Official Duties

(a) On request of a person listed in Subsection (b), the attorney general shall issue a written opinion on a question affecting the public interest or concerning the official duties of the requesting person.

(b) An opinion may be requested by:

- (1) the governor;
- (2) the head of a department of state government;
- (3) a head or board of a penal institution;
- (4) a head or board of an eleemosynary institution;
- (5) the head of a state board;
- (6) a regent or trustee of a state educational institution;
- (7) a committee of a house of the legislature;
- (8) a county auditor authorized by law; or
- (9) the chairman of the governing board of a river authority.

(c) A request for an opinion must be in writing and sent by certified or registered mail, with return receipt requested, addressed to the office of the attorney general in Austin. The attorney general shall:

(1) acknowledge receipt of the request not later than the 15th day after the date that it is received; and

(2) issue the opinion not later than the 180th day after the date that it is received, unless before that deadline the attorney general notifies the requesting person in writing that the opinion will be delayed or not rendered and states the reasons for the delay or refusal.

(d) The attorney general and the requesting person by written agreement may waive the provisions of Subsections (a) and (c) if the waiver does not substantially prejudice any person's legal rights.

Acts 1987, 70th Leg., ch. 147, § 1, eff. Sept. 1, 1987.

Historical and Statutory Notes

Prior Law:

Acts 1913, 33rd Leg., p. 48, ch. 26.
Acts 1917, 35th Leg., p. 376, ch. 165.

Acts 1977, 65th Leg., p. 1302, ch. 512, § 1.
Acts 1983, 68th Leg., p. 4514, ch. 735, § 1.
Vernon's Ann.Civ.St. art. 4399(a), (b).

Constitutional Provisions

Article 4, § 22, provides, in part, that the Attorney General "shall * * * give legal advice in writing to the Governor and other executive officers, when requested by them, and perform such other duties as may be required by law...."

Questions:

1. Does section 121.005(a) no longer apply to notaries?
2. Does section 121.005(a) still apply to the judges and court clerks mentioned in section 121.001?
3. Does section 406.014 which deals with record keeping by notaries authorize the three methods of identification mentioned in paragraph (a)(5) of that section?
4. Does an introduction not under oath satisfy the introduction method of identification described in Government Code 406.014(a)(5)?

Section 121.001 of the Civil Practices and Remedies Code provides that acknowledgements may be taken within the State by; clerks of district courts, judges and clerks of county courts and notaries public.

Section 121.005(a) of the Civil Practices and Remedies Code provides that:

"An officer may not take the acknowledgement of a written instrument unless the officer knows or has satisfactory evidence on the oath of a credible witness that the acknowledging person is the person who executed the instrument and is described in it". (2)

Section 406.014 of the government Code provides, in part, as follows:

"(a) A notary public other than a court clerk notarizing instruments for the court shall keep in a book a record of:

- (1) the date of each instrument notarized;
- (2) the date of the notarization;
- (3) the name of the signer, grantor, or maker;
- (4) the signer's, grantor's or maker's residence or alleged residence;
- (5) whether the signer, grantor or maker is personally known by the notary public, was identified by an identification card issued by a governmental agency or a passport issued by the United States, or was introduced to the notary public and, if introduced, the name and residence or alleged residence of the individual introducing the signer, grantor or maker; * * *

Section 121.005 of the Civil Practices and Remedies Code which applies to all officers authorized to take acknowledgements in the State permits only two means of the identifying persons making acknowledgments, (1) personal knowledge of the officer, and (2) satisfactory evidence on the oath of a credible witness. Presumably the "satisfactory evidence" referred to includes an introduction under oath.

Section 406.014 of the Government Code which applies to acknowledgements and other types of notarizations performed by notaries appears to authorize three methods of identification; (1) personal knowledge of the notary, (2) identification cards, and (3) introductions.